



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2017-127
Site: 20 R Cross Street
Date of Decision: January 31, 2018
Decision: Petition Approved with Conditions
Date Filed with City Clerk: February 13, 2018

ZBA DECISION

Applicant / Owner Name: Damon Peykar
Applicant / Owner Address: 20 R Cross Street, Somerville, MA 02145
Alderman: Matthew McLaughlin

Legal Notice: Applicant / Owner, Damon Peykar, seeks a Special Permit under SZO §4.4.1 to alter a nonconforming structure by altering a rear first-story deck and stair as well as a Variance under SZO §8.5 to increase the floor area ratio (FAR) by finishing a portion of the basement. RB Zone. Ward 1.

<u>Zoning District/Ward:</u>	RB Zone. Ward 1
<u>Zoning Approval Sought:</u>	SP under §4.4.1 and V under §8.5
<u>Date of Application:</u>	November 30, 2017
<u>Date(s) of Public Hearing:</u>	January 31, 2018
<u>Date of Decision:</u>	January 31, 2018
<u>Vote:</u>	4-0

Appeal #ZBA 2017-127 was opened before the Zoning Board of Appeals in the Visiting Nurse Association Community Room, 259 Lowell Street. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The proposal is to finish a portion of the basement and expand an existing rear deck.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. **Information Supplied:**

The Board finds that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.

2. **Compliance with Standards:** *The Applicant must comply "with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit."*

The structure is currently nonconforming with respect to the following dimensional requirements: lot area, lot area per dwelling unit, landscaped area, pervious area, rear yard setback, right side yard setback, street frontage, and number of parking spaces.

Section 4.4.1 states that “[l]awfully existing nonconforming structures other than one- and two-family dwellings may be enlarged, extended, renovated or altered only by special permit authorized by the SPGA in accordance with the procedures of Article 5. The SPGA must find that such extension, enlargement, renovation or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming building. In making the finding that the enlargement, extension, renovation or alteration will not be substantially more detrimental, the SPGA may consider, without limitation, impacts upon the following: traffic volumes, traffic congestion, adequacy of municipal water supply and sewer capacity, noise, odor, scale, on-street parking, shading, visual effects and neighborhood character.”

The proposal to extend the rear deck will impact the following nonconforming dimensions: landscaped area, rear yard setback, and right side yard setback. This alteration to a nonconforming structure requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO).

	<i>Existing</i>	<i>Proposed</i>	<i>Required</i>
Landscaped area	22%	19%	25%
Rear yard setback	13.5 feet	8 feet	20 feet
Right side yard setback	1.8 feet	1.8 feet	10 feet

Each unit in the dwelling has two bedrooms, which causes the site to require five off-street parking spaces (rounded up from 4.5). The proposal will add a third bedroom in the basement that will be allocated to the first floor unit, which keeps the number of required off-street parking spaces at five; therefore, no parking relief is required.

In considering a special permit under §4.4 of the SZO, the Board finds that the alterations proposed would not be substantially more detrimental to the neighborhood than the existing structure. The proposal would allow for the first floor to have rear access to the outdoor because the existing deck does not provide that



option. The proposal has been designed with setbacks that minimally impact the neighbors and the requirements for ground coverage, building height, front yard setback, and left side yard setback will continue to be conforming to the requirements of the SZO.

3. Consistency with Purposes: *The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."*

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promote the health, safety, and welfare of the inhabitants of the City of Somerville; to provide for and maintain the uniquely integrated structure of uses in the City; to lessen congestion in the streets; to protect health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to conserve the value of land and buildings; to adequately protect the natural environment; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the RB district, which is, "to establish and preserve medium density neighborhoods of one-, two- and three-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts."

4. Site and Area Compatibility: *The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."*

Surrounding Neighborhood: Cross Street is comprised of a mix of multi-family residential dwellings, educational buildings, and commercial businesses.

Impacts of Proposal (Design and Compatibility): The proposed work will not have any impact on the front of the structure and the proposed work to the rear of the deck would not be visible from Cross Street.

5. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*

6. SomerVision Plan: *Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville's neighborhoods, and preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups.*

FINDINGS FOR VARIANCE (SZO §5.5):

A Variance (§5.5) is sought to increase the floor area ratio (FAR) from 0.89 (2,880 square feet) to 1.04 (3,363 square feet) by finishing a portion of the basement by adding 535 square feet of net floor area to the basement and removing 52 square feet of net floor area from the first floor. The total increase in net floor area is 483 square feet, which is 130 square feet over the maximum allowed FAR.



In order to grant a variance the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO.

1. *There are “special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing substantial hardship, financial or otherwise.”*

Applicant’s response: This is a very small rear lot, with a unique shape and size, that appears to have been divided from the front lot at some point. The home is relatively new, but was rebuilt on the same foot print as the original home (which burned). Therefore, the preexisting lot size and home size creates a unique circumstance which is not shared by many homes in the zone. A more typical lot size would not create this hardship.

Board response: The subject property consists of a uniquely shaped flag lot of 3,233 square feet and is situated behind 20 Cross Street. A flag lot is a parcel of land with a long slender strip (that resembles a flag pole) and extends from a main street to a rectangular portion of the lot (that resembles a flag) where a structure is situated. The narrow portion of the lot is 10 feet wide and opens to a wider portion where a three-family triple decker is situated. The shape of this flag lot is a special circumstance that is unique within the zoning district and causes a hardship of having a reduced amount of lot area.

2. *“The variance requested is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land.”*

Applicant’s response: The request, to finish a portion of an existing basement, is a reasonable request and is an amenity enjoyed by many homes in the community. This does not create any increase in density (no added units or auto traffic), or any change to the exterior of the property. The request is for 130 square feet above what is allowed by-right. Additionally, the request is not to finish the entire basement, but just a portion. We cannot reduce the amount of square footage requested, without substantially altering the proposed design.

Board response: The request to finish a portion of the basement by 130 square feet over what is allowed will grant reasonable relief to the owner and is the minimum necessary for the condominium owner to occupy the basement space with finished area.

3. *“The granting of the variance would be in harmony with the general purpose and intent of this Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare.”*

Applicant’s response: Granting the request for the variance will allow the owner to create additional space within his home, for his own enjoyment. The request will not create any problem with congestion, because it does not alter the required number of parking spaces (5 spaces required before the change, 5 after). The request will help create a more fire-resistant structure, as portions of the unfinished wood structure will be covered with fire-resistant gypsum board. There will be no change to light or air in the city, as the proposed project does not alter the exterior of the home. Additionally, the proposed project will allow another bedroom in the city, which will assist with providing housing to Somerville residents at all income levels, which helps preserve and increase the amenities of the municipality.



Board response: Finishing a portion of the basement will be in harmony with the general purpose and intent of this Ordinance, as mentioned in Section II.3 of this report, and would not be injurious to the neighborhood or otherwise detrimental to the public welfare.

DECISION:

Special Permit under §4.4.1

Present and sitting were Members Orsola Susan Fontano, Danielle Evans, Josh Safdie, and Anne Brockelman with Richard Rossetti, Elaine Severino, and Pooja Phaltankar absent. Upon making the above findings, Danielle Evans made a motion to approve the request for a **Special Permit**. Anne Brockelman seconded the motion. Wherefore the Zoning Board of Appeals voted **4-0** to **APPROVE** the request.

Variance under §8.5

Present and sitting were Members Orsola Susan Fontano, Danielle Evans, Josh Safdie, and Anne Brockelman with Richard Rossetti, Elaine Severino, and Pooja Phaltankar absent. Upon making the above findings, Danielle Evans made a motion to approve the request for a **Variance**. Anne Brockelman seconded the motion. Wherefore the Zoning Board of Appeals voted **4-0** to **APPROVE** the request.

In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for the extension of a rear deck and finishing a portion of the basement. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Pln g.							
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>November 30, 2017</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>October 25, 2017</td><td>Modified plans submitted to OSPCD (A.0, A2.0, A3.0, A4.0, A5.0, A5.1, A6.0, and A8.0)</td></tr></table>				Date (Stamp Date)	Submission	November 30, 2017	Initial application submitted to the City Clerk’s Office	October 25, 2017	Modified plans submitted to OSPCD (A.0, A2.0, A3.0, A4.0, A5.0, A5.1, A6.0, and A8.0)
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Any changes to the approved plans that are not <i>de minimis</i> must receive SPGA approval.										
Pre-Construction										
2	If required by the City of Somerville Engineering Department, the proposed basement finished floor elevation shall not be less than is 1 foot above the Seasonal High Ground Water elevation. Also if required by the Engineering Department, the seasonal high ground water elevation shall be determined by a Massachusetts certified soil evaluator and stated on a signed soil test pit log.	BP	Eng.							
Construction Impacts										



3	The applicant shall post the name and phone number of the general contractor at the site entrance where it is visible to people passing by.	During Construction	Plng.	
4	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
Design				
5	Applicant shall provide final material samples for windows and decking to Planning Staff for review and approval prior to the issuance of a building permit.	BP	Plng.	
Site				
6	Landscaping shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
Miscellaneous				
7	Granting of the applied for use or alteration does not include the provision for short term rental uses, such as AirBnB, VRBO, or the like. Separate approvals are needed for the aforementioned uses.	Ongoing	ISD / Plng.	
8	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well kept and in good and safe working order.	Cont.	ISD	
Public Safety				
9	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
10	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	
11	To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
Final Sign-Off				
12	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Danielle Evans
Josh Safdie
Anne Brockelman (Alt.)

Attest, by City Planner: _____

Alexander C. Mello

Copies of this decision are filed in the Somerville City Clerk's office.
Copies of all plans referred to in this decision and a detailed record of the
SPGA proceedings are filed in the Somerville Planning Dept.

CLERK'S CERTIFICATE

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____

